

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

V5 TECHNOLOGIES, LLC,  
Plaintiff(s),  
v.  
SWITCH, LTD.,  
Defendant(s). } Case No. 2:17-cv-02349-KJD-NJK  
} ORDER  
} (Docket No. 28)

Pending before the Court is a motion to stay discovery pending resolution of Defendant's motion to dismiss. *See* Docket No. 28; *see also* Docket No. 26 (motion to dismiss). Plaintiff filed a response in opposition, and Defendant filed a reply. Docket Nos. 33, 35. The Court finds the motion properly resolved without a hearing. *See* Local Rule 78-1. For the reasons discussed below, the Court **DENIES** Defendant's motion to stay discovery and **ORDERS** the parties to file a joint proposed discovery plan by December 5, 2017.

The Court has broad discretionary power to control discovery. *See, e.g., Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). “The Federal Rules of Civil Procedure do not provide for automatic or blanket stays of discovery when a potentially dispositive motion is pending.” *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). The party seeking a stay carries the heavy burden of making a strong showing why discovery should be denied. *See, e.g., Turner Broadcasting Sys., Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997). The case law in this District makes clear that requests to stay all discovery may be granted when: (1) the pending motion is potentially dispositive; (2) the

1 potentially dispositive motion can be decided without additional discovery; and (3) the Court has taken  
2 a “preliminary peek” at the merits of the potentially dispositive motion and is convinced that the plaintiff  
3 will be unable to state a claim for relief. *See Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D.  
4 Nev. 2013).

5 The Court finds that a stay of discovery is not appropriate in this case. Most significantly, the  
6 Court has taken a preliminary peek at the motion to dismiss and is not convinced that it will be granted.<sup>1</sup>  
7 It bears repeating that the filing of a non-frivolous dispositive motion, standing alone, is simply not  
8 enough to warrant staying discovery. *See, e.g., Tradebay*, 278 F.R.D. at 603. Instead, the Court must  
9 be “convinced” that the dispositive motion will be granted. *See, e.g., id.* “That standard is not easily  
10 met.” *Kor Media*, 294 F.R.D. at 583. “[T]here must be *no question* in the court’s mind that the  
11 dispositive motion will prevail, and therefore, discovery is a waste of effort.” *Id.* (quoting *Trazska v.  
12 Int’l Game Tech.*, 2011 WL 1233298, \*3 (D. Nev. Mar. 29, 2011)) (emphasis in original). The Court  
13 requires this robust showing that the dispositive motion will succeed because applying a lower standard  
14 would likely result in unnecessary delay in many cases. *Id.* (quoting *Trazska*, 2011 WL 1233298, at \*4).

15 Accordingly, the Court **DENIES** Defendant’s motion to stay discovery and **ORDERS** the parties  
16 to file a joint proposed discovery plan by December 5, 2017.

17 IT IS SO ORDERED.

18 DATED: November 28, 2017

19   
20 NANCY J. KOPPE  
United States Magistrate Judge

21

22

23

24

25 <sup>1</sup> Conducting the preliminary peek puts the undersigned in an awkward position because the assigned  
26 district judge who will decide the motion to dismiss may have a different view of its merits. *See Tradebay*,  
27 278 F.R.D. at 603. The undersigned’s “preliminary peek” at the merits of that motion is not intended to  
28 prejudice its outcome. *See id.* As a result, the undersigned will not provide a lengthy discussion of the  
merits of the pending motion to dismiss in this instance. Nonetheless, the undersigned has carefully  
reviewed the arguments presented in the motion to dismiss and subsequent briefing.